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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6

7 UNITED STATES OF AMERICA,

No. C 06-00380 SI

8 Plaintiff,

**ORDER DENYING MOTION FOR  
SENTENCE REDUCTION**

9 v.

10 OMAR WARD,

11 Defendant.  
12 \_\_\_\_\_/

13 Currently before the Court is defendant's motion for a modification or reduction of his sentence  
14 pursuant to 18 U.S.C. § 3582(c)(2). On October 12, 2007, this Court sentenced Omar Ward to 90  
15 months in prison after he pled guilty to one count of possession of cocaine with intent to distribute at  
16 least five grams of cocaine base. In his plea agreement, Mr. Ward admitted that he possessed with intent  
17 to distribute approximately 39 grams of cocaine base. Docket No. 52 , Ex. B. Based on that quantity,  
18 the plea agreement calculated Ward's sentence offense level as 27 (including a subtraction for  
19 acceptance of responsibility). *Id.* However, the plea agreement noted that his sentence may be  
20 increased if he was found to be a career offender. *Id.* At sentencing, the Court determined that Mr. Ward  
21 was a career offender who fell into Criminal History Category VI and that, before a three-point  
22 reduction for acceptance of responsibility, had an offense level of 34, creating a sentencing range of 188  
23 to 235 months. The Court departed from that range and imposed a sentence of 90 months.

24 On June 3, 2011, defendant filed a motion seeking a reduction in his sentence in light of the  
25 Sentencing Commission's retroactive amendments to the crack cocaine guidelines, effective November  
26 1, 2011. *See* Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (2010); United States  
27 Sentencing Guidelines Manual § 2D1.1 (2011); United States Sentencing Commission, 76 Fed. Reg.  
28 41,332 (July 13, 2011) (on retroactivity). Under the amended Guidelines, Mr. Ward's base offense level

1 is calculated at 26 and adjusted to 23 with his acceptance of responsibility. *See* Probation Office  
2 Sentence Reduction Investigation Report. The amendments, however, do not change Mr. Ward's "total  
3 offense level" which remains at 34 in light of his status as a career offender. *Id.*

4 As the Probation Office notes, Mr. Ward is not entitled to a reduction because the Sentencing  
5 Commission made eligibility for sentencing reductions dependent entirely on a defendant's  
6 *pre-departure* offense level and criminal history category. *Id.*; *see also* United States Sentencing  
7 Guidelines Manual § 1B1.10 Application Note 1(A). "[T]he only applicable guideline range" that  
8 matters now in determining whether an amendment applies "is the one established before any  
9 departures." United States Sentencing Commission, 76 Fed. Reg. 41,332, 41,334 (July 13, 2011)  
10 (quoting *United States v. Guyton*, 636 F.3d 316, 320 (7th Cir. 2011)). This Court is required to follow  
11 the Sentencing Commission's direction with respect to sentence-modification proceedings authorized  
12 by § 3582(c)(2). *See Dillon v. United States*, 130 S. Ct. 2683, 2693 (2010).

13 Mr. Ward asserts that when he was originally sentenced, the Court found that a significant  
14 downward departure was warranted, and by doing so found that Ward should not be treated as a career  
15 offender for sentencing purposes. *See, e.g., United States v. Allen*, 2009 U.S. Dist. LEXIS 35093 (N.D.  
16 Cal. Apr. 8, 2009) (granting motion to resentence where at original sentencing Court departed from  
17 career offender sentencing range – as it overrepresented defendant's criminal history and seriousness  
18 of current offense – to the guideline range for the substantive offense). Here, however, the Court did  
19 not find that Ward should not be treated as a career offender. Rather, the Court found a significant  
20 departure from the guideline range was warranted based on other factors. *See* Defendant's Sentencing  
21 Memorandum at 1.

22 As Mr. Ward's originally calculated offense level derived from the career offense guidelines  
23 and not the crack cocaine guidelines, he is not eligible for a reduction based on the new crack cocaine  
24 guidelines. *See, e.g., United States v. Wesson*, 583 F.3d 728 (9th Cir. 2009). Mr. Ward's motion is  
25 DENIED.

26 **IT IS SO ORDERED.**

27 Dated: January 8, 2012

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SUSAN ILLSTON  
United States District Judge